

Mind the Gap

Countdown to Viet Nam's Accession to the WTO

1 December 2005

Introduction

Viet Nam is entering its final stages of accession negotiations. Although it is unlikely that it will achieve the goal of joining the World Trade Organisation (WTO) by the time of the Hong Kong Ministerial Conference in December, negotiators want a swift end to the process. Analysis of progress made between the two Working Party meetings of April and September 2005 reveals that Working Party members are continuing to demand further concessions from the Vietnamese negotiators. If agreed to, these concessions could have potentially damaging consequences for Viet Nam's ability to safeguard the livelihoods of its poorest people.

The demands are being led by three of the six countries yet to complete bilateral negotiations with Viet Nam: the United States, Australia, and New Zealand. Yet hope for a pro-development accession package is not yet entirely lost. Oxfam believes there are a number of key elements, still under negotiation, that must be retained if

development is to be sealed into Viet Nam's WTO membership agreement. This paper sets out those elements in detail.

The current state of play

On 15 September 2005, the Working Party on the Accession of Viet Nam to the WTO met to examine the first revision of its Draft Report. A WTO news bulletin reported that the meeting represented 'a substantial step forward in the 10-year-old negotiation', and that Viet Nam had made 'tremendous efforts and progress'.¹ Yet despite this progress, the WTO and most other external commentators suggest that Viet Nam still has a lot more negotiating to do before its final goal of WTO membership is achieved.

There is a widely held view that the original hope of concluding accession negotiations by the December 2005 Ministerial Conference in Hong Kong has ebbed away. Nevertheless, the Vietnamese negotiators are still pushing ahead towards a swift conclusion of negotiations. The risk is that eagerness to reach the ultimate aim of WTO membership may lead to an increased vulnerability to demands for WTO-plus concessions.

From a development perspective, the concern is that continuing requests for increased liberalisation, over and above the levels offered by existing WTO members, could be granted in sectors such as agriculture, which are vital to the livelihoods of some of the poorest people in Viet Nam. The agriculture sector employs 69 per cent of Viet Nam's labour force, and 45 per cent of the rural population live below the poverty line.² WTO membership, whether it comes sooner rather than later, must not be achieved at the expense of the Vietnamese government's ability to safeguard the lives of its poorest people.

At the Working Party meeting in April 2005, when the draft report on Viet Nam's accession was first discussed, development was already at risk of being sidelined by demands from Working Party members. Oxfam's analysis at the time found that Working Party members were pushing Viet Nam towards a comprehensive WTO-plus accession package that could have damaging consequences for its efforts to develop and to reduce poverty. Following the 15 September discussion of the first revision of the draft report, the situation is just as precarious, if not more so. The ability of Viet Nam to secure a pro-development accession package currently hangs in the balance, with some of the demands from the draft Working Party report having been conceded to in the revised version.

Despite the fact that Working Party members acknowledge the progress that Viet Nam is making on key systemic issues, such as the liberalisation of trading rights and the elimination of dual pricing,³ they are still pressuring negotiators to commit to further concessions in sectors that are essential to ensuring food and livelihood security.

Between the April and September meetings of the Working Party, the following changes in negotiating position appear to have been made:

- Viet Nam has agreed to be fully compliant with all WTO agreements upon accession, including the complex agreement on Sanitary and Phyto-Sanitary (SPS) measures. These are extremely tough commitments, given that Viet Nam is classified by the UN as a low-income, HIPC country, with budgetary priorities linked to poverty reduction, and the World Bank has estimated the costs of implementation at \$100m per agreement.⁴ All existing developing country members of the WTO, including recently acceded members such as China and Cambodia, have benefited from transition periods for compliance with WTO

agreements. The exclusion of Viet Nam from this type of Special and Differential Treatment (SDT) epitomises the inequality of the accession process. Viet Nam continues to request technical assistance for the SPS agreement, which will be essential if it is to fulfill its commitment to be compliant upon accession.

- Viet Nam is now requesting a shorter, very modest, seven-year phase-out period post-accession for export subsidies that are offered in the form of investment incentives. All other export subsidies will be phased out upon accession. This represents a shift from the position of its negotiators in April, when they were asking for a nine-year phase-out period for export subsidies in the form of investment incentives and three years for all other subsidies.⁵
- Whilst no changes have been made to the text on textiles and clothing within the revised draft report, the square brackets⁶ surrounding it have been removed.⁷ This apparently agreed text, by no means assures Viet Nam of quota-free market access for its textiles and clothing industry, as must be applied to all WTO members following the end of the Multifibre Arrangement (MFA) in January 2005. The wording of the text is loose enough to allow the continuation of quotas post-accession. In reality, this would mean restricted access to US markets only, as EU quotas for Viet Nam were abolished in 2005. However, the USA is one of the largest markets for Vietnamese products and restricted access would put Viet Nam well behind its main export competitors, who are already WTO members and who are benefiting from the abolition of quotas.

It is in the bilateral negotiating arena that aspirant member countries face the toughest test. The countries making the most far-reaching demands are almost always the last to agree to a bilateral deal to accompany the accession package. For Viet Nam, bilateral deals are pending with the USA, Australia, and New Zealand, as well as with Honduras, Mexico, and the Dominican Republic. Once a country has sealed its bilateral deal, it tends to take a back seat in the multilateral negotiations, having already secured all it wants from the aspirant country. For this reason it is the six countries yet to conclude their bilateral deals, particularly the three developed nations, that are doing all of the remaining hard negotiating in both the bilateral and multilateral forums.

The bare essentials

There are several key issues currently under negotiation that are so essential to Viet Nam's ability to develop that they must be safeguarded. As Viet Nam appears to be entering its final stage of negotiations, it is crucial that it is not forced to relinquish some of those policies and practices that it has been using to such good effect in the fight against poverty over the past 15 years – policies which include a range of legal, institutional, and economic reforms, together with the gradual liberalisation of international trade.

The Viet Nam Report on achieving the Millennium Development Goals (MDGs) shows more than a halving of the incidence of poverty, from 58 per cent in 1993 to 24.1 per cent in 2004.⁸ That said, the same report shows that progress in some remote rural areas of Viet Nam has not been so encouraging. Poverty rates in these areas are four to five times higher than the average, and the rate of households falling back into poverty is high.⁹ The Vietnamese government recognises that tackling poverty and hunger in the most disadvantaged areas is one of its greatest challenges. Working Party members must not be allowed to compromise Viet Nam's ability to meet these challenges.

Tariff rate quotas for products of importance to poor farmers

Viet Nam is especially eager to protect its poorest farmers from increased competition in those products on which their fragile livelihoods depend. These include sugar, maize, salt, and a number of animal products. Sugar and salt farmers, in particular, live and work in some of the most remote and disadvantaged areas of Viet Nam.

Within the terms of its accession package, Viet Nam is seeking to protect some of these products by applying tariff rate quotas (TRQs). A TRQ is a quota for a volume of imports at a particular tariff rate. Once the quota is filled, a higher tariff is applied on additional imports. TRQs are essentially an intermediate step in converting quantitative restrictions into tariffs and are a legitimate and well-used instrument within the WTO. TRQs enable countries to protect products that are essential to ensuring food and livelihood security against sudden import surges and unfair competition. Their use is by no means restricted to developing countries like Viet Nam. Recently acceded members, for example Taiwan, and established members, including the USA, use them extensively, on sugar and animal products among others.¹⁰

Viet Nam would like to introduce a TRQ on sugar to replace the current system of discretionary licensing. The world sugar market is currently distorted by huge quantities of illegal subsidised sugar exports from the EU. The WTO itself ruled in April 2005 that the EU is dumping more than three times the level of subsidised sugar exports than is allowed under WTO rules.¹¹ It is exactly this kind of unfair competition that the use of TRQs may help countries to combat. Members should welcome Viet Nam's efforts to bring its trade practices into line with WTO rules by switching from discretionary licensing to a TRQ. However, the revised draft report shows that some members, reportedly led by New Zealand and, in a marked display of double standards, the USA, continue to oppose Viet Nam's proposal to use TRQs, claiming that they are 'outmoded and [distort] trade'.¹²

A timetable for phasing out all export subsidies

Viet Nam continues to push for flexibility regarding its timetable to phase out export subsidies. Showing true negotiating spirit, it has revised down its request from earlier in the year and is now requesting a shorter seven-year phase-out period post-accession for export subsidies in the form of investment incentives. All other export subsidies will be phased out upon accession.

Working Party members should grant this request without argument. Not only have WTO members agreed in the July 2004 Framework Agreement to longer phase-out periods, as yet undefined, for export subsidies for all developing countries;¹³ in another display of double standards, developed countries, including the USA, have not yet come to an agreement on their own timetable to eliminate damaging agricultural export support.

Subsidies in the form of investment incentives are vital to the development of disadvantaged areas, which are home to the highest concentration of people living in poverty in Viet Nam. There is an argument that these investment incentives are effectively non-actionable subsidies for regional development and are therefore permitted under WTO rules. As the World Bank has said, all countries in the East Asia region use investment incentives, including existing WTO members, so it would be difficult for Viet Nam not to offer them.¹⁴ In this context, there is no valid reason why Viet Nam's very modest request for a seven-year phase-out period post-accession should not be granted, immediately and without further negotiation.

Maintenance of export management controls on rice

Disagreement remains within the Working Party regarding the compatibility with WTO membership of Viet Nam's export management controls on rice.¹⁵ Viet Nam eliminated rice quotas in 2001, and the flexible control mechanism it now uses is entirely compatible with Article XI 2(a) of GATT 1994 on the General Elimination of Quantitative Restrictions.¹⁶ This mechanism helps to keep prices stable and to protect the commodity from speculation.

Requests that Viet Nam discontinue its use of this mechanism go above and beyond existing WTO rules. Viet Nam should have the ability to manage its exports of rice, a product that is vital to the food security of so many Vietnamese people. This should include an element of control over foreign companies exporting rice in the case of an emergency, or if national reserve stocks run low.

In this respect, Viet Nam is requesting a transition period until 1 January 2011 for the right of foreign-invested enterprises to export rice. Rice makes up 90 per cent of total staple food production, it is farmed on more than 60 per cent of total agricultural land, and more than two-thirds of Vietnamese households grow it.¹⁷ Viet Nam's ability to flexibly manage exports of this crucial product, in a manner that is WTO-compatible, must not be challenged by Working Party members.

Blocking non-standard concessions: allowing the textiles and clothing market to flourish

Viet Nam is classified as a Non-Market Economy (NME) by the WTO. There is an acceptable reason for this special treatment. However, WTO members should not use NME status as an excuse for protectionism against more competitive economies. China was also considered an NME during its accession process and had to agree to a raft of unique 'special safeguards',¹⁸ which as a result restricted its most favoured nation (MFN) rights.¹⁹ These measures include a 'textile-specific safeguard clause' that allows WTO members to impose quantitative restrictions on imports of Chinese textiles and clothing products if they are found to disrupt markets. Under the safeguard, members can limit specific products to an increase of 7.5 per cent above the preceding year's import levels.

Viet Nam has already agreed to a market disruption safeguard in its bilateral trade agreement (BTA) with the USA, similar to the 'textile-specific safeguard clause' described above. In both the initial and revised draft reports, members have requested that Viet Nam provide a copy of its BTA with the USA to the Working Party and clarify how provisions in this agreement would be applied in relation to other members of the WTO. Due to the WTO MFN rule, this opens the door to all the WTO-plus provisions that were agreed with the USA within the BTA, including market disruption safeguards of this nature.

This could spell disaster for Viet Nam's blossoming textiles and clothing industry, which accounts for more than 17 per cent of its total exports²⁰ and is a vital source of income and employment. It is particularly important for women, many of whom live in the rural areas, even though poor employment practices and the denial of labour rights mean that these benefits are not consistently realised. Member states will not hesitate to call upon such safeguards post-accession, if aspirant member countries agree to them – for reasons of genuine market disruption or simply as blatant protectionism.

China has been at the centre of a trade dispute with the USA and the EU in recent months, after both threatened to invoke the textiles safeguard clause in the face of

rising exports of Chinese textiles and clothing products. The dispute with the EU was eventually resolved through negotiation, after nearly 80 million pieces of imported Chinese clothing piled up at EU borders, with European clothes retailers clamouring for their release.²¹ However, the USA did act upon its threat and imposed seven safeguard import restrictions, using the 'textile-specific safeguard clause' to justify them. Four of the seven restrictions are based solely on a perceived threat of market disruption.²² All seven were still in place at the time of writing.

China is a larger and a relatively wealthy country compared with Viet Nam and will probably successfully weather its textiles and clothing storm. It is by far the strongest player in the textiles and clothing market, with the fastest growth rate. The IMF reports that, in the first quarter of 2005, China's textile and clothing exports to the USA increased by 60 per cent, whereas those of Bangladesh, Cambodia, Sri Lanka, and Viet Nam increased by an average of 17 per cent.²³ The IMF predicts that, as prices fall significantly on all apparel imports from China to the USA, over time this will squeeze the profit margins of Asia's low-income country exports and erode their overseas orders.

Viet Nam is already open to a continuation of textile quotas from the USA post-accession, given the loose wording of the section on textiles and clothing in the revised draft report. The situation for its textiles and clothing industry could be even worse, unless it firmly resists attempts to include such non-standard safeguards within the terms of its accession package. It could find its textile and clothing industry restricted from two different directions. On the one hand, protectionist measures, like those invoked against China, could restrict exports to US and EU markets, while China's success could lead to falling market prices, which would further reduce Viet Nam's remaining market share. Working Party members must refrain from demanding the inclusion of any non-standard safeguards within Viet Nam's membership deal.

Securing access to flexibilities for developing countries already agreed in the Doha Round

As well as a more generous timetable for the phase-out of export subsidies, a Special Safeguard Mechanism and a provision for Special Products are currently being negotiated within the Doha Round. Both are specially intended for use by all developing country members. These provisions, contained in the July 2004 Framework Agreement, are destined to replace the existing Special Safeguard (SSG) and will provide developing countries with another means of protecting products vital to food and livelihood security against import surges. Working Party members continue to claim that access to the existing SSG 'is not an entitlement of acceding countries'.²⁴ However, this is a groundless supposition. Viet Nam should be able to use all the instruments available to other developing country WTO members to further protect its vulnerable farm sectors. This includes the Special Safeguard Mechanism and Special Products currently under negotiation.

Unfortunately, the SDT promised for developing countries within the Doha Declaration is fast being eroded as the current round of negotiations progresses. Oxfam analysis shows that the USA and EU are endeavouring to exclude certain developing countries from SDT under the new Doha agreements.²⁵ If the USA and the EU are doing all they can to exclude existing WTO members from these provisions, it is likely that they will be even more determined to block Viet Nam's access to such flexibilities.

Recommendations

WTO members should stop setting onerous WTO-plus conditions in negotiations with Viet Nam, which may have a negative impact on the lives of poor people. Viet Nam still has a chance of achieving some key elements of a pro-development accession deal. If it is to do so, Oxfam believes the accession package should include the following:

- Viet Nam should be able to use all the instruments available to other developing country WTO members to further protect vulnerable farm sectors. These measures include tariff rate quotas, the current WTO Special Safeguard, and the new provisions now under negotiation at the WTO (Special Safeguard Mechanism and Special Products).
- Viet Nam should not be asked to make greater commitments on the scale and timing of reductions in export subsidies than those made by other developing countries at the WTO, or those agreed in current WTO negotiations. More specifically, investment incentives for enterprises operating in disadvantaged areas should be granted on the basis that they represent non-actionable subsidies for regional development, which are legal within the WTO.
- Upon accession, Viet Nam should be able to maintain its current WTO-compliant export management controls on rice, in order to protect food security.
- Members of the Working Party should not include non-market economy provisions that restrict most favoured nation rights, with potentially damaging consequences for Viet Nam's textiles and clothing industry. In this respect, WTO-plus provisions on trade safeguards in the bilateral trade agreement concluded with the USA should not become part of the accession package.
- The USA should abolish textile and clothing quotas for Viet Nam upon accession, since these were abolished for all other member states at the end of 2004.
- Compliance with the agreements on Sanitary and Phyto-Sanitary measures must be tied to the provision of technical assistance, in order to spread the costs of implementation and to build the required technical capacity to implement them.

Notes

¹ 'Working Party examines first revision of membership report', WTO, 20 September 2005.

² 'Assessing the Poverty Impact of the Doha Development Agenda: A Case Study of Viet Nam', Centre for Rural Progress, Hanoi, February 2003, p.21.

³ 'Draft Report of the Working Party on the Accession of Viet Nam: Revision', WTO, 5 September 2005, p.34, p.49.

⁴ J. M. Finger and P. Schuler (1999) 'Implementation of Uruguay Round Commitments: The Development Challenge', World Bank Policy Research Working Paper.

⁵ 'Draft Report of the Working Party,' op. cit., p.87.

⁶ Square brackets are placed around text in WTO documents when the content has not been approved by all parties. Once the text has been agreed, the brackets are removed.

⁷ 'Draft Report of the Working Party,' op. cit., pp.119–20.

⁸ 'Achieving the Millennium Development Goals', Report of Viet Nam, August 2005.

⁹ Ibid.

¹⁰ 'Do As I Say, Not As I Do: The Unfair Terms for Viet Nam's Entry to the WTO', Oxfam International, April 2005, p.10.

¹¹ 'An End to EU Sugar Dumping', Oxfam International, April 2005, p.2.

¹² 'Draft Report of the Working Party', op. cit., p.54.

¹³ WTO (2004), Text of the 'July Package', (http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm). This is a package of WTO framework agreements, agreed by members on 30 July 2004, following deadlock in the Ministerial Meeting in September 2003.

¹⁴ 'Taking Stock: An Update on Viet Nam's Economic Development and Reforms', World Bank, 2004, p.24.

¹⁵ 'Draft Report of the Working Party', op.cit., pp.46-49.

¹⁶ 'Do As I say, Not As I Do', op.cit., p.12.

¹⁷ 'Viet Nam Development Report 2004', joint donor report to the Viet Nam Consultative Group Meeting, 2003.

¹⁸ 'Do As I Say, Not As I Do', op. cit., p.15.

¹⁹ The MFN rule is one of the cornerstones of the WTO. According to this rule, what is offered to one member must be offered to all.

²⁰ UNDP Monthly Socio-Economic Statistical Bulletin, March 2005.

²¹ 'China signs deal with EU on impounded textiles; US negotiations stalled', ICTSD, BRIDGES weekly, Vol. 9. No. 29, 7 September 2005.

²² 'Textiles debate heats up; China imposes new export duties', ICTSD, BRIDGES weekly, Vol. 9. No. 18, 25 May 2005.

²³ 'Asia's Economic Outlook is Bright, But Risks Loom', IMF Survey, 23 May 2003.

²⁴ 'Draft Report of the Working Party', op. cit., p.114.

²⁵ 'From Development to Naked Self-Interest', Oxfam Briefing Note, July 2005.

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